IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02/09/2002

CORAM

THE HONOURABLE MR.JUSTICE V.S.SIRPURKAR
AND
THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

Writ Petition No.29465 of 2002
and
W.P.M.P.No.47865 of 2002

Mrs.E.Sundari ... Petitioner

-Vs-

1.The State of Tamil Nadu
rep.by its Secretary
Home Department,
Fort St.George, Chennai-9.

2.The Additional Director
General Of Police and
Commissioner of Police
Greater Chennai, Chennai-8.

3.The Accountant General (Accounts
and Entitlements), Tamil Nadu
Chennai 600 018.

4.The Registrar
Tamil Nadu State Administrative
Tribunal, Chennai-1. ... Respondents

Petition under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus, as stated therein.

For Petitioner : No appearance

For Respondents: Mr.S.T.S.Murthi
Special Government Pleader

:O R D E R

(Order of the Court was made by V.S.SIRPURKAR, J.)

Rule returnable forthwith. Learned Special Government Pleader takes notice.

2. This petition is by an unfortunate mother of a government servant, who has died during his service as a police constable. The said police constable Saravanan is said to have committed suicide, leaving a suicide note holding his second wife Kasturi Thilagam and her brother responsible for his committing suicide. The mother Sundari approached the Tamil Nadu State Administrative Tribunal (hereinafter referred to as 'the tribunal') for the grant of family pension. In her application, the relief was prayed for in the following words:-

"The applicant respectfully prays that this Honourable Tribunal may be pleased to direct the 1st respondent to pass necessary G.O. relaxing pension rules to enable the applicant to withdraw pension benefits as requested by the 2nd respondent to the 1st respondent vide his proceedings R.C.No.CPC/PEN/61/0643/2000 dated 10.2.2001 and pass such further or other orders as this Honourable Tribunal may deem fit and proper in the interest of justice."

This application has been dismissed by the Tribunal on the basis of the Tamil Nadu Pension Rules, more particularly Rule 49, which provides for family pension. Needless to mention that the Tribunal has restricted its order only to the grant of family pension. The tribunal has held that the family pension would be payable only to the wife Kasturi Thilagam.

3. This matter was heard in part on the last occasion and we had directed the Government Pleader to take notice and to make certain statements, which we found necessary. Today, on account of the boycott, it seems that the learned counsel for the petitioner is not present and, therefore, we are constrained to proceed further with the assistance of the Government Pleader. Even the petitioner is not present and there does not seem to be any request for adjournment either.

4. At the outset, it must be mentioned that the position which obtains from Rule 49 is that a government servant, if he is married, his wife becomes the exclusive claimant for the family pension. We must further make it clear that under Note (i) of Rule 49(2((b), it is provided that,
" The rules do not prohibit the grant of family pension to the government servant who commits suicide."

Therefore, on the basis of this note, it is clear that even if the constable has committed suicide, this would not come in the way of the grant of family pension to the eligible person. Rule 49 (13)(b) defines the family as follows:-

"Family in relation to a government servant means -
(i) Wife in the case of a male government servant and husband in the case of a female government servant, provided the marriage took place before the retirement of the government servant.
(i)(a) 'Not relevant' "

Sub Rule (ii) and (iii) provide as under:-

" (ii):- Son who has not attained the age of 21 years and unmarried daughter who has not attained the age of 24 years (including such son or daughter legally and also sub son or unmarried daughters born through illegitimate wife) before retirement, but shall not include son or daughter born after retirement.

(iii) Father and mother in the case of an unmarried government servant."

The petitioner being the mother would come only under Rule (iii). But, the petitioner has no say because admittedly Saravanan was a married person and the mother can be included in the definition of " family" only in case of an unmarried government servant. Therefore, there would be no question of the mother claiming any right on Saravanan' s family pension on the basis of above rules.

5. One more rule must be mentioned, i.e., Rule 49(8)(i), which reads as under:-

"Except as provided in Sub Rule (7) the family pension shall not be payable to more than one family member at the same time."

Rule (7) which has been referred to in this Rule provides for the pension to the eligible children. But, we are not concerned in this case because there does not appear to be any child, much less eligible children for the family pension.

Rule 49 (8)(ii) provides as under:-

"If a deceased government servant or pensioner leaves behind a widow or widower, the family pension shall become payable to the widow or widower, failing which to the eligible child."

6. A conjoint reading of these provisions would mean that where a government servant dies and leaves a widow, she alone becomes eligible for the pension. In this case, therefore, since Kasturi Thilagam was a living widow at the time of the death of Saravanan, she would naturally be entitled to the family pension. But, we are not concerned with the rights of Kasturi Thilagam; we are concerned with the rights of the mother Sundari, the petitioner before us. Even if the matter is considered from all the angles, the mother, the petitioner herein cannot claim the family pension and it was perhaps for that reason that the learned counsel during the debate had invited our attention to the fact that the concerned authority had recommended for the relaxation of the rules for providing pension to the petitioner.

7. Our attention was invited to a communication dated 10.2.2001 bearing R.C.No.CPC/PEN/61/0643/2000. This seems to be a communication from the Additional Director General of Police and Commissioner of Police, Greater Chennai, wherein the said authority has given the complete facts regarding the death of Saravanan. He has also referred to the then pending criminal case

against Tmt.Kasthuri Thilagam and her brother and others for offence u/s.306 I.P.C. for having abetted the suicide of Saravanan. He has then mentioned that the parents and the second wife of the deceased, Kasturi Thilagam have preferred a claim over the terminal benefits of the deceased police constable and the legal heir certificate furnished revealed that the said three individuals were the heirs of the deceased. He further points out that a succession certificate has been obtained by the petitioner from this Court in favour of the petitioner, the mother and father also. It is further mentioned that a pension proposal was forwarded to the Accountant General for issue of authorisation for D.C.R.G. and family pension and after accepting the proposal, the Accountant General had issued authorisation for D.C.R.G. only and regarding the family pension, the Accountant General had requested to obtain a specific G.O. for authorising the family pension in favour of the parents, as the succession certificate issued was contrary to the pension rules. He, therefore, in the light of the above facts and the request of the Accountant General, requested the Government to relax the pension rules and to issue government orders in favour of the parents of the deceased to enable the drawal of family pension equally.

8. Learned counsel earnestly argued that the family pension could not have been given in favour of a person like Kasthuri Thilagam, who may have been responsible for the death of the constable and, therefore, our attention was also invited to Rule 49 (11-C), which is as under:-

"If the person, who, in the event of the death of a government servant, while in service or after retirement, is liable to receive the family pension under this rule is charged with an offence of murdering the government servant or for abetting the commission of such an offence, the claim of such person including other eligible member or members of the family to receive the family pension shall remain suspended till the conclusion of the criminal proceedings instituted against him."

9. Basing on this rule, the learned counsel argued that this would practically disentitle Kasturi Thilagam to claim any family pension. There is nothing on record to suggest as to what has happened to the criminal case against Kasturi Thilagam, but we hasten to add that we are not again concerned with the claim of Kasthuri Thilagam because, it is not she who has come before the Tribunal by way of an original application claiming the family pension. We do not even know as to whether she has preferred any claim for family pension. This is apart from the fact that under Rule 49 (11-C), a person who is barred from claiming the family pension should have committed the "murder" of the government servant or should have atleast "abetted committing such murder". It is nobody's case that Kasthuri Thilagam is facing a murder charge or even a charge for abetment of murder of Saravanan. The learned counsel wanted us to read the words 'of such an offence' broadly, so as to include even an offence under section 306. We cannot read what is not conveyed by the Rule and we cannot also supply any interpretation when the words are absolutely clear and without any ambiguity. The words 'for abetting the commission of such an offence' would only mean the offence of murder. Otherwise, the words ' such an offence' would not have been used. Again, even if we hold that this may come in the way of Kasthuri Thilagam to claim the

family pension, that by itself does not give any scope for us to hold the petitioner entitled for the pension because Rule 49 (11-C)(b) provides as under:-

"49 (11-C)(b):- If on the conclusion of the criminal proceedings referred to in Clause (a), the person concerned -

(i) is convicted for the murder or abetting in the murder of the government servant, such a person shall be debarred from receiving the family pension, which shall be payable to other eligible member of the family from the date of the death of the government servant.
(emphasis ours)
(ii) is acquitted of the charge of murder or abetting in the murder of the government servant, the family pension shall be payable to such person from the date of the death of the government servant."

10. Therefore,the other person referred to in rule has to be the eligible member of the family to receive the pension. We have already shown that Sundari, the petitioner herein could by no means be said to be an eligible person. We must note here that she alone was the claimant before the tribunal and again she alone is the petitioner. We are not concerned with Kasturi Tilagam's rights and we would, therefore, refuse to go into that controversy. Suffice it to say that looked from any angle Sundari does not become an eligible person to receive the pension. Can then a power lie either in the tribunal or us to direct the government to relax the rules in favour of the appellants, more particularly in view of the succession certificate ? A mere grant of succession certificate by the High Court, in our opinion, would not by any chance control the statutory rules. In granting the succession certificates, this Court was not concerned with and did not actually consider the impact of the pension rules, which are the statutory rules governing the issue. Therefore, a mere grant of succession certificate, in our opinion, may not earn any right in favour of Sundari, who, under the family pension rules, is not entitled to have the family pension.

11. This leaves us with the prayer of Sundari for a power of relaxation which is provided under Rule 82. Under that rule, there is a power to relax the requirement of any rules or to dispense with any rules for avoiding any hardship in a particular case. That has to be done with the concurrence of the Finance Department. What the tribunal has directed here is to grant pension to Kasthuri Thilagam alone. Now, in our opinion, the learned counsel is right in saying that the Tribunal has travelled outside the scope of the application. Indeed, Kasthuri Thilagam had not approached the tribunal with a prayer for the grant of family pension. Therefore, in an application made by Sundari, the tribunal could not have directed the grant of family pension in favour of Kasthuri Thilagam. It could have, at the most, made some observations in respect of the rights of the original applicant Sundari vis-a-vis Kasthuri Thilagam. Not stopping at that, the tribunal in this case, has chosen to direct the government to grant the pension to Kasthuri Thilagam. In this, the tribunal has also not considered the scope of Rule 82, which is the plenary power of the government to relax certain requirements or dispense with the same for avoiding any hardship. We would, therefore, choose to set

aside that part of the tribunal's order, by which the tribunal has directed the grant of family pension in favour of Kasthuri Thilagam. We would then leave the whole question open for the government to consider the claim of Kasthuri Thilagam, if any, made for the pension as also the representation by Sundari for relaxation of the rules in her favour. The Government will examine the question of hardship caused to Sundari visa-vis the claim made by Kasthuri Thilagam, if any, for the pension. The government shall consider everything if necessary by giving a hearing to the concerned parties within six months from today. The Government Pleader assures us in that behalf. The time schedule shall be strictly followed. With this, the writ petition stands partly allowed. Consequently, connected W.P.M.P.No.47865 of 2002 is closed. In the light of the observations made by us, we set aside the order of the tribunal to the extent that we have indicated.

(V.S.S, J.) (F.M.I.K,J.)
02.09.2002

Index : Yes
Website : Yes

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To :

1.The Secretary to Government,
Home Department,
Fort St.George, Chennai-9.

2.The Additional Director
General Of Police and
Commissioner of Police
Greater Chennai, Chennai-8.

3.The Accountant General (Accounts
and Entitlements), Tamil Nadu
Chennai 600 018.

4.The Registrar
Tamil Nadu State Administrative
Tribunal, Chennai-1.

V.S.SIRPURKAR, J.
AND
F.M.IBRAHIM KALIFULLA, J.